IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2334 of 2002

with
Civil Application No.8558 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OIL & NATURAL GAS CORPN.

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 2334 of 2002

MR AJAY R MEHTA for Petitioner No. 1

NOTICE NOT RECD BACK for Respondent No. 1

MR AJ PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 06/10/2003

COMMON ORAL JUDGEMENT

1. The appellant, by filing this First Appeal under

Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, has challenged judgment and award dated November 9, 2001 passed by the learned Joint Civil Judge (S.D.) Bharuch, in Land Reference Case No. 157 of 1994.

2. Lands of the respondent No.2 were acquired for for the public purpose of 'work over operation well No.Gardhar 24' by issuance of notification under Section 4 of the Act on January 30, 1992. After following the usual procedure prescribed under the Act, the Land Acquisition Officer had made his award on June 29, 1993, offering compensation of the acquired lands at the rate of Rs.3/- per sq.mtr.

3. The claimant was dissatisfied with the award of the Land Acquisition Officer and, hence, he had filed an application under Section 18 of the Act requiring the Land Acquisition Officer to refer his application to the Reference Court for the determination of the market value of the acquired lands. In the application, the claimant had claimed compensation of his lands at the rate of Rs.50/- per sq.mtr. Before the Reference Court, the claimant was examined at Exh.16. and he had produced certified copy of the judgment and award rendered in Land Acquisition Case No.67 of 1994 at Exh.11 with regard to previously acquired lands of village Chanchwell. It may be mentioned that, by award Exh.11, the lands of village Chanchwell were acquired by Section 4 notification of November 15, 1990. The Reference Court had determined the market value of the acquired lands of village Chanchwell at the rate of Rs.28 per sq.mtr. The previous award Exh.11 was challenged in the High Court by filing First Appeals Nos. 5328 of 1999 to 5336 of 1999 and determination of the market value by the Reference Court was confirmed by the High Court by its judgment and order dated November 21, 2000. The said judgment and order of the High Court was challenged by the appellant before the Supreme Court by filing Special Leave Petitions Nos. 7570 of 2001 to 7575 of 201 which came to be dismissed summarily by the Supreme Court on August 27, 2001.

4. The Reference Court, relying on the determination of market value of previously acquired lands of village Chanchwell, had determined the market value of the present acquired lands at the rate of Rs.28/- per sq.mtr.. as on January 30, 1992.

5. The learned counsel for the appellant has vehemently challenged the determination of market value

of the present acquired lands by contending that the determination of market value of the previous award Exh.11 was made on the basis of 'yield' of the acquired lands whereas, in the present case, the claimant had not led any evidence with regard to 'yield' of the present acquired lands and no oral or documentary evidence was led before the Reference Court with regard to yield or crops raised on the acquired lands at the relevant period. It is, therefore, submitted by the learned counsel for the appellant that the Reference Court had erred in placing reliance on the previous award Exh.11 for the purpose of determination of the market price of the present acquired lands.

6. The submission of the learned counsel for the appellant deserves merit and is accepted. It is not in dispute that the determination of the market value of the previously acquired lands of village Chanchwell was made on the basis of 'yield' derived from the said acquired lands. The Reference Court had blindly relied upon the previous award Exh.11 without considering the fact that no evidence was led by the claimant in the present reference with regard to income derived from the crops raised on the present acquired lands. In the absence of evidence produced by the claimant with regard to income derived from the crops raised on the present acquired lands, the Reference Court had erred in placing reliance on the previous award Exh.11 for the purpose of determination of the market price of the present acquired lands.

7. As a result of foregoing reasons, the appeal is allowed. The judgment and award dated November 9, 2001 passed by the learned Joint Civil Judge (S.D.) Bharuch, in Land Reference Case No. 157 of 1994, is quashed and set aside. The Reference Case No.157 of 1994 is remanded back to the Reference Court for the purpose of determination of the market price of the present acquired lands afresh by permitting both the parties to lead oral as well as documentary evidence in support of their cases. As the acquisition of the lands is of the year 1992, the Reference Court is directed to dispose of Reference Case No.157 of 1994 as expeditiously as possible preferably on or before March 31, 2004. Office is directed to send back R & P to the Reference Court forth with along with copy of this judgment. No order as to costs.

8. As the First Appeal is allowed, Civil Application No.8558 of 2002 does not survive and is disposed of

accordingly with no order as to costs.

[M.H. KADRI, J]

(swamy)